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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/462,179	03/10/2000	NICOLANGELO PEDUTO	022701-854	4762
21839	7590	06/21/2004		
BURNS DOANE SWECKER & MATHIS L L P				
POST OFFICE BOX 1404				
ALEXANDRIA, VA 22313-1404				
EXAMINER				
PATTERSON, MARC A				
ART UNIT		PAPER NUMBER		
1772				

DATE MAILED: 06/21/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Advisory Action

Application No.

09/462,179

Applicant(s)

PEDUTO ET AL.

Examiner

Marc A Patterson

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--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 23 April 2004 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE. Therefore, further action by the applicant is required to avoid abandonment of this application. A proper reply to a final rejection under 37 CFR 1.113 may only be either: (1) a timely filed amendment which places the application in condition for allowance; (2) a timely filed Notice of Appeal (with appeal fee); or (3) a timely filed Request for Continued Examination (RCE) in compliance with 37 CFR 1.114.

PERIOD FOR REPLY [check either a) or b)]

- a) ☒ The period for reply expires 3 months from the mailing date of the final rejection.
- b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection. ONLY CHECK THIS BOX WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

1. ☐ A Notice of Appeal was filed on _____. Appellant's Brief must be filed within the period set forth in 37 CFR 1.192(a), or any extension thereof (37 CFR 1.191(d)), to avoid dismissal of the appeal.
2. ☒ The proposed amendment(s) will not be entered because:
- (a) ☒ they raise new issues that would require further consideration and/or search (see NOTE below);
 - (b) ☐ they raise the issue of new matter (see Note below);
 - (c) ☐ they are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
 - (d) ☐ they present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____.

3. ☐ Applicant's reply has overcome the following rejection(s): _____.
4. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
5. ☐ The a) ☐ affidavit, b) ☐ exhibit, or c) ☐ request for reconsideration has been considered but does NOT place the application in condition for allowance because: _____.
6. ☐ The affidavit or exhibit will NOT be considered because it is not directed SOLELY to issues which were newly raised by the Examiner in the final rejection.
7. ☒ For purposes of Appeal, the proposed amendment(s) a) ☒ will not be entered or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

The status of the claim(s) is (or will be) as follows:

Claim(s) allowed: none.Claim(s) objected to: none.Claim(s) rejected: 1-26.Claim(s) withdrawn from consideration: none.

8. ☐ The drawing correction filed on _____ is a) ☐ approved or b) ☐ disapproved by the Examiner.
9. ☐ Note the attached Information Disclosure Statement(s) (PTO-1449) Paper No(s). _____.
10. ☒ Other: See attached.

ADVISORY ACTION

Acknowledgement of Applicant's Amendments

1. The amendment made in Claim 1 in the After Final Amendment filed April 24, 2004 has not been entered because the amendment raises a new issue. The claims prior to amendment were not directed to an external layer which is the 'outermost layer of the multilayer structure.' The amendment would therefore require further search and consideration to be completely addressed. If the amendment were to be entered, the amended claim would overcome the prior art of record.

ANSWERS TO APPLICANT'S ARGUMENTS

2. Applicant's arguments regarding the Applicant's arguments regarding the 35 U.S.C. 103(a) rejection of Claims 1 – 12 and 19 – 26 as being unpatentable over Kerschbaumer (U.S. Patent No. 5,219,003), 35 U.S.C. 103(a) rejection of Claim 13 as being unpatentable over Kerschbaumer (U.S. Patent No. 5,219,003) in view of VanBuskirk et al (U.S. Patent No. 5,357,030), and 35 U.S.C. 103(a) rejection of Claims 14 – 18 as being unpatentable over Kerschbaumer (U.S. Patent No. 5,219,003) in view of Princiotta et al (European Patent No. 0646627), of record in the previous Action, have been carefully considered but have not been found to be persuasive for the reasons set forth below.

Applicant argues, on page 8 of Paper No. 24, that the rejection is improper because Kerschbaumer does not disclose an external layer that is the outermost layer of the multilayer structure. However, as stated above, the amendment raises a new issue. The claims prior to amendment were not directed to an external layer which is the 'outermost layer of the multilayer

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structure.' The amendment would therefore require further search and consideration to be completely addressed.

Applicant also argues, on page 9, that VanBuskirk et al fails to cure the deficiency of Kerschbaumer, because VanBuskirk et al does not disclose an external layer that is the outermost layer of the multilayer structure. However, as stated above, the amendment raises a new issue. The claims prior to amendment were not directed to an external layer which is the 'outermost layer of the multilayer structure.' The amendment would therefore require further search and consideration to be completely addressed.

Conclusion

3. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Marc Patterson, whose telephone number is (571) 272 - 1497. The examiner can normally be reached on Monday through Friday from 8:30 AM to 5:00 PM. If attempts to reach the examiner by phone are unsuccessful, the examiner's supervisor, Harold Pyon, can be reached at (571) 272 - 1498. FAX communications should be sent to (703) 872-9310. FAXs received after 4 P.M. will not be processed until the following business day.

Marc A. Patterson, PhD.

Marc Patterson
Art Unit 1772

Harold Pyon
HAROLD PYON
SUPERVISORY PATENT EXAMINER
HP

6/17/04